

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

and

STATE OF OREGON,

Plaintiff-Intervenor,

v.

ERNEST MONIZ, Secretary of the
United States Department of Energy,
and the UNITED STATES
DEPARTMENT OF ENERGY,

Defendants.

NO: 2:08-CV-5085-RMP

SECOND AMENDED CONSENT
DECREE BETWEEN DEPARTMENT
OF ENERGY AND STATE OF
WASHINGTON

WHEREAS, the Court on March 11, 2016, amended portions of the Consent Decree between the State of Washington (“Washington”) and the U.S. Department of Energy (“DOE”), ECF No. 222 (Amended Consent Decree Between Department of Energy and State of Washington);

1 WHEREAS, the Court ordered that “DOE and Washington have thirty days
2 in which to file any joint stipulation to modify the Court’s Amended Consent
3 Decree,” ECF No. 221 at 102;

4 WHEREAS, DOE and Washington have conferred regarding potential
5 modifications related to the Court’s requirement that DOE “must purchase and
6 have available by December 31, 2016, a spare A-E-1 reboiler for the 242-A
7 Evaporator,” *see* ECF No. 222 at 5 (Amended Consent Decree Part IV.B.5);

8 WHEREAS, DOE and Washington agree that the below-specified
9 modification to Part IV.B.5 of the Amended Consent Decree, retaining the
10 obligation for DOE to purchase the reboiler by December 31, 2016, but changing
11 the deadline by which DOE must have the reboiler available from December 31,
12 2016, to December 31, 2018, is appropriate;

13 WHEREAS, DOE and Washington agree that the below-specified
14 modifications to Part IV.C.1-2 of the Amended Consent Decree to add monthly
15 and quarterly reporting requirements regarding activity and progress made toward
16 purchasing and having available the spare reboiler are appropriate to ensure that
17 Washington is kept apprised of DOE’s progress on this issue; and

18 WHEREAS, submission of this Stipulation pursuant to the Court’s March
19 11, 2016 order is without prejudice to any rights of either Washington or DOE to
20 appeal that order or previous orders;

1 THEREFORE, IT IS HEREBY STIPULATED AND ORDERED, that:

2 The Amended Consent Decree between the U.S. Department of Energy and
3 the State of Washington, ECF No. 222, be modified as follows:

4 **I. Part IV.B.5**

5 Part IV.B.5 of the Amended Consent Decree, ECF No. 222 at 5, is hereby
6 **AMENDED** to read as follows:

7 5. To safeguard against a hypothetical two-year outage of the 242-A
8 Evaporator, which would result in a minimum of a two-year delay in retrieval of
9 remaining SSTs, DOE must purchase by December 31, 2016, a spare A-E-1
10 reboiler for the 242-A Evaporator, and have it available by December 31, 2018.

11 **II. Part IV.C.1-2**

12 Part IV.C.1-2 of the Amended Consent Decree, ECF No. 222 at 7–10, is
13 hereby **AMENDED** by renumbering Part IV.C.1.h as Part IV.C.1.i, by adding a
14 new Part IV.C.1.h, and by adding Part IV.C.2.(d), so that it reads as follows:

15 **C. Reporting.**

16 1. Quarterly Reports. DOE shall, on a quarterly basis, submit to Ecology a written
17 report documenting WTP construction and startup activities and tank retrieval
18 activities that occurred during the period covered by the report. This written report
19 shall provide the status of progress made during the reporting period and shall
20 include:

21 a. A brief description of project accomplishments and project

1 issues encountered during the reporting period and/or expected
2 in the next three (3) months;

3 b. A definitive statement describing whether or not DOE has
4 complied with milestones that have already come due as of the
5 date of the report, and how any missed milestones may affect
6 compliance with other milestones;

7 c. Where applicable, a description of actions initiated or
8 otherwise taken to address any schedule slippage;

9 d. Budget/cost status;

10 e. Copies of written directives given by DOE to the contractors
11 for work required by this Decree, if requested by Ecology;

12 f. A description of progress made towards resolving the five
13 outstanding WTP technical issues;

14 g. An accounting of total labor hours expended on SST retrieval,
15 specifying the total percentage of hours worked utilizing self-
16 contained breathing apparatus; and

17 h. A description of activity and progress made toward purchasing
18 and having available a spare A-E-1 reboiler for the 242-A
19 Evaporator, including a description of cost and schedule
20 performance.
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1 i. If Ecology can demonstrate good cause for concluding that
2 DOE has not been forthcoming in a Section IV-C-1 quarterly
3 report, Ecology may petition the Court for an immediate
4 hearing.

5 a. If the Court finds that good cause exists for Ecology's
6 request for a hearing under Section IV-C-1-h, the Court
7 will schedule a hearing within thirty days of ruling on
8 Ecology's request.

9 i. Ecology will serve Oregon with any request for a
10 hearing under Section IV-C-1-h.

11 b. During the IV-C-1-h hearing, DOE will be subject to
12 examination by Ecology and the Court in open court with
13 a public record, on any issues raised by Ecology
14 concerning the sufficiency of DOE's progress and the
15 adequacy of the quarterly report.

16 2. Monthly reports. DOE shall, on a monthly basis, submit to Ecology a written
17 summary report (e.g., approximately 10 to 15 pages in length) documenting WTP
18 construction and startup activities and tank retrieval activities covered by this
19 Decree. This report may be combined with the reports already provided by DOE to
20 Ecology pursuant to Section 4 of the HFFACO Action Plan. The monthly report
21 shall address: (a) cost and schedule performance (earned value management

1 system graphs) for each major activity; (b) significant accomplishments during the
2 prior month; (c) significant planned activities for the next month; and (d) a
3 description of activity and progress made toward purchasing and having available a
4 spare A-E-1 reboiler for the 242-A Evaporator, including a description of cost and
5 schedule performance.

6 **IT IS SO ORDERED.**

7 The District Court Clerk is directed to enter this Order and provide copies to
8 counsel.

9 **DATED** this 12th day of April 2016.

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11 *s/ Rosanna Malouf Peterson*
12 ROSANNA MALOUF PETERSON
13 United States District Judge
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